

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DAVID SEIDEMANN,

Plaintiff,

-against-

BARBARA BOWEN, personally and in her capacity
as President of the PSC/CUNY and PSC/CUNY
(Professional Staff Congress/City University of New
York),

Defendants.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ OCT 08 2004 ★

P.M. _____
TIME A.M. _____

Revised

**DEFENDANTS'
NOTICE OF CROSS-MOTION
FOR SUMMARY JUDGMENT**

CV 02 3389 (SJ)(LB)

PLEASE TAKE NOTICE, that upon the annexed declaration of Christopher Callagy, Esq., with the exhibits annexed thereto; Defendants' Local Rule 56.1 Statement of Material Facts; and the accompanying memorandum of law in support of the cross-motion for summary judgment, all dated July 12, 2004, defendants Barbara Bowen and PSC/CUNY will move this Court before the Honorable Lois Bloom at the United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, NY 11201 on the 10th day of September, 2004 at 9:30 a.m., or as soon thereafter as counsel can be heard, for an Order dismissing plaintiff's Third Amended Complaint as against defendants pursuant to Rule 56 of the Federal Rules of Civil Procedure granting summary judgment to defendants dismissing plaintiff's Third Amended Complaint, and for such other and further relief as shall be deemed just and proper.

PLEASE TAKE FURTHER NOTICE that answering affidavits must be served on
defendants by August 12, 2004, in accordance with the prior scheduling order of the Court.

Dated: New York, New York
July 12, 2004

Yours, etc.

JAMES R. SANDNER (JS-0360)
Attorney for Defendants
52 Broadway
New York, NY 10004
(212) 533-6300

By:


CHRISTOPHER CALLAGY (CC-5115)
Of Counsel

TO: DAVID SEIDEMANN
Plaintiff *pro se*
38 Garfield Avenue
North Haven, CT 06473

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DAVID SEIDEMANN,

Plaintiff,

-against-

**DECLARATION IN
SUPPORT OF DEFENDANTS'
CROSS-MOTION
FOR SUMMARY JUDGMENT**

CV 02 3389 (SJ)(LB)

BARBARA BOWEN, personally and in her capacity
as President of the PSC/CUNY and PSC/CUNY
(Professional Staff Congress/City University of New
York),

Defendants.

CHRISTOPHER M. CALLAGY, pursuant to 28 U.S.C. §1746, declares under penalty of perjury that the following is true and correct:

1. I am an attorney admitted to practice before the courts of the State of New York and this Court. I am of counsel to James R. Sandner, attorney for defendants Barbara Bowen and the Professional Staff Congress ("PSC"). I submit this declaration in support of union defendant's cross-motion for summary judgment.

2. Plaintiff's claims relating to agency fees withheld by the PSC have been rendered moot by Defendants' proffer of a full refund of any and all fees that could possibly be at issue herein.

3. As stated in the affidavit of PSC Executive Director Deborah E. Bell, defendants have or will have refunded all agency fees prior to this motion being considered by this Court.

See Bell Affidavit at ¶ 18 annexed to Defendants' Brief as Exhibit A.

4. In addition, Plaintiff's claims relating to alleged procedural defects in the PSC's agency refund procedure have either been cured as a result of amendment or are simply not required as a matter of constitutional law.

5. Moreover, there is no reason to doubt the PSC's faithful implementation of its amended plan since Executive Director Bell has made it very clear that she recognizes the relevant legal parameters governing agency fee refund. See Bell Affidavit at ¶ 14.


6. As a consequence of fees already refunded and the balance about to be refunded Defendants respectfully assert that there are no remaining factual disputes that would require this case to go forward.

7. In the absence of any legitimate basis - other than naked dissatisfaction with current PSC leadership on the part of Plaintiff - to doubt the sworn statement of Executive Director Bell, Defendants should be given the opportunity to prove their good faith in administrative due course.

8. Since the law in the area of agency fee has developed over time, a past arbitration award vested Defendants with a broader discretion in these matters than subsequent case law supports, *see* Brand Arbitration Decision and Award annexed to the Bell Affidavit as Exhibit 2, and the recent retirement of the PSC's long time Legal Director, Nicholas Russo, Defendants should be given the benefit of doubt in their prospective implementation of their amended plan. *See passim* Bell Affidavit.

9. For all these reasons, Defendants Cross-motion for Summary Judgment should be granted.

DATED: July 12, 2004
New York, New York


CHRISTOPHER M. CALLAGY (5115)